



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

November 15, 1947

Hon. J. E. McDonald
Commissioner of Agriculture
Austin, Texas

Opinion No. V-433

Re: Authority of Commissioner of Agriculture to pay salaries from funds appropriated as contingent funds

Dear Sir:

Your request for an opinion of this Department dated October 11, 1947, relates to the authority of the Commissioner of Agriculture to hire part-time employees for the Field Seed Certification Division of the Department of Agriculture and pay their salaries from Item 23 of the departmental appropriation for the Department of Agriculture contained in S. B. 391, General Laws, 50th Legislature, at page 812. Your question has arisen in view of Paragraph (14) f, Section 2, of this Act, which reads as follows:

"f. Contingent Expenses. None of the funds hereinabove appropriated for 'contingent expenses' or 'maintenance and miscellaneous' shall be used for the payment of any salaries unless specifically authorized to be paid in the itemization under the contingent, maintenance and miscellaneous items hereinabove set out and designated therein as 'salaries,' 'extra help,' or 'seasonal labor.'"

The appropriation to the Field Seed Certification Division of the Department of Agriculture in S. B. 391 is as follows:

"Field, Seed, Certification Division	For years ending August 31, August 31, 1948 1949	
"19. Area Inspectors and Supervisors, none to exceed \$2280. per year each	\$9,120.00	9,120.00
"20. Traveling Expenses..	2,000.00	2,000.00
Out of Special Pure Seed Fund (Article 56 to 67 inclusive, R.C.S., 1925, and Chapter 93, First Called Session of the 41st Legislature, and any Amendments.)		
"21. Chief of Division...	3,624.00	3,624.00
"22. Office Assistant, Inspectors and other seasonal help, none to exceed \$2280. per year each	3,456.00	3,456.00
"23. Postage, printing, repairs, equipment, supplies, traveling expense and contingent	10,000.00	10,000.00"

The "Special Pure Seed Fund" referred to above came into existence by virtue of Article 67a, Vernon's Civil Statutes (Ch. 93, 1st C.S., 41st Legislature, as amended by Acts 46th Legislature, Ch. 2, page 3) and the "Special Pure Bred Cotton Seed Inspection Fund" by virtue of Article 66, Vernon's Civil Statutes (Acts 2nd C.S. 38th Legislature, 1923, p. 127). We make this observation for the reason that apparently the names of these funds are and have been used interchangeably by the Legislature in appropriation bills, the Comptroller of Public Accounts and the Treasury Department, and that the 50th Legislature intended to appropriate in Item 21, 22 and 23 moneys in both funds although only one is designated. We are aware of the sources of the money going into these funds and of the Legislature's expression as to the uses these funds are to be put to as revealed in the statutes, Articles 56 through 67a, Vernon's Civil Statutes.

We believe that the provisions of Paragraph (14)f of Section 2, S.B. 391, quoted above, forbid the payment of any salary from Item 23 of your appropriation, and that the Legislature intended that part-time employees for the Field Seed Certification Division should be paid from Item 22, however small it now appears. Item 22 states specifically "Office Assistant, Inspectors and other seasonal help." Under no rule of construction could we say that Item 23 contained in any part thereof a salary provision, especially in the face of the prohibition of Paragraph (14) f. Item 23 falls within the prohibition of paragraph (14) f, since it contains the word "Contingent" and does not contain the words "Salaries," "extra help" or "seasonal labor." See Attorney General's Opinion V-368.

SUMMARY

The Commissioner of Agriculture is not authorized to pay part-time employees from Item 23 of the departmental appropriation for the Department of Agriculture contained in S. B. 391, 50th Legislature.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

James T. Bryan
James T. Bryan
Assistant

JTB/lh

APPROVED

Price Daniel
ATTORNEY GENERAL